REGULATION 39-26-102.21

- 1) Sales of Energy
 - a) Energy sale or use prior to March 1, 2010 and after June 30, 2012. The sale, use, storage, or consumption of electricity, coal, gas, fuel oil, steam, nuclear fuel, and coke occurring before March 1, 2010 or after June 30, 2012 are exempt from sales and use tax when used for any of the following purposes: processing, manufacturing, mining (including oil and gas exploration and production), refining, irrigation, construction, telegraph, telephone and radio communication, street and railroad transportation services, and all industrial uses. See, Special regulation 19 "Gas and Electric Services" for acceptable methods of determining the credit allowed for gas and electricity used in restaurant operations.
 - b) Energy sale and use between March 1, 2010 and June 30, 2012. The exemption from state sales and use tax set forth in subsection 1(a)(i), above, is suspended for such sale, use, storage, or consumption occurring on or after March 1, 2010 and before July 1, 2012, and sales and use tax are due thereon, unless otherwise exempt pursuant to other statutes (e.g., sale to, or use of energy by, charitable entities, schools, and governmental entities). An energy utility whose billing cycle includes exempt sales before and taxable sales after March 1 shall prorate the tax for such periods.
 - i) Exceptions. The suspension of the tax exemption described in subsection 1(a), above, shall not apply to purchases of:
 - (1) Diesel fuel for off-road use,
 - (2) Electricity, coal, gas, fuel oil, steam, coke, or nuclear fuel used for agricultural purposes,
 - (3) Coal, gas, fuel oil, steam, coke, or nuclear fuel used for generation of electricity.
 - (4) Electricity, coal, gas, fuel oil, steam, coke, or nuclear fuel used by railroads.
 - ii) Application of exception to suspension of exemption.
 - HB 10-1190, which suspended the exemption described in 1(a), above, excluded from the suspension the applications described in 1(b)(i)(1)-(4). In these areas, the exemption continues to exist as described in 1(a). Thus, HB 10-1190 neither expanded nor limited the exemption in these specific areas. Off-road, agricultural, electricity generation, and railroad uses must still qualify for the exemption as described in 39-26-102(21)(a) C.R.S. and as further described in 1(a) of this rule. Thus, departmental guidance issued pursuant to this statute and rule apply for the period 3/1/2010-6/30/2012, including FYI 71 and the use of the DR 1666 form to claim the exemption.
 - iii) State-administered cities, counties, and special districts. Energy sales described in subsection 102(21) made on or after March 1, 2010 remain exempt from state-administered city, county, and special district sales and use taxes.
 - c) Energy sale and use for residential use. The sale, use, storage, or consumption of electricity, coal, wood, gas, fuel oil, or coke sold for residential use is exempt from tax

regardless of whether such sale, use, storage, or consumption occurs before or after March 1, 2010. See, regulation 39-26-715.1(a)(II) for additional details.

2) Newspaper publishers and commercial printers. Vendors must collect the tax on all sales of equipment and materials to publishers of newspapers and commercial printers, except on sales of newsprint and printer's ink, which are expressly exempt as wholesale sales. "Newsprint" is defined as cheap, machine-finished paper, chiefly from wood pulp, and used mostly for newspapers.

3) Definitions

- a) "Agricultural purposes" means the production of agricultural commodities as defined in 39-26-102(1) C.R.S.
- b) "Gas" means natural or manufactured gas used in the production of energy or used in industry to heat greenhouses, used by industrial plants engaged in manufacturing or used for melting metal in foundries, for firing brick kilns, or for other industrial uses.
- c) "Industrial uses" means the use of electricity, coal, gas, fuel oil, coke, or nuclear fuel in a continuing business activity of manufacturing or producing tangible personal property or services as set forth in C.R.S. 39-26-104(1)(c) and (d.1).